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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/580,822	05/26/2000	Gyorgy Lajos Kis	OP/V-30969A	9338

1095 7590 10/22/2003

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EXAMINER

CONLEY, SEAN E

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 10/22/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/580,822

Applicant(s)

KIS ET AL.

Examiner

Sean E Conley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2003 and 19 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-23,25-27 and 29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-23,25-27 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The amendments filed July 16, 2003 and August 19, 2003 have been considered for examination. Claims 24 and 28 have been canceled by amendment and claims 21-23, 25-27 and 29 remain pending in the application. The drawings filed August 19, 2003 have been entered into the application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

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were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 21-22, 25-26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0322134 in view of Tan et al. (U.S. Pat. 5,996,424).

EP 0322134 discloses a method of packaging and steam sterilizing a pharmaceutical product such as saline solution. A semi-rigid squeezable polypropylene bottle is filled with a pharmaceutical product and once the bottles are sealed and prepared for sterilization they are inserted into an autoclave. The individual bottles are filled to the maximum internal volume with the pharmaceutical product thus eliminating any air present. The elimination of the air inside the bottle prevents the formation of dimples in the polypropylene during the sterilization. The autoclave serves the purpose of sterilizing the bottles using an application of steam at temperatures of 121 °C (see column 3, line 29 –column 6, line 12 and figures 1 and 2). EP 0322134 further teaches that the lids and caps of the bottles can be formed of other polymeric materials other than polypropylene (see column 3, lines 29-49). However, EP 0322134 does not disclose a cap that consists of a material with a modulus of elasticity different from polypropylene.

Tan et al. disclose a polymeric bottle for obtaining, storing, and transporting chemical samples. The polymeric bottle comprises a bottle portion (38) and a cap portion (22). Preferably the bottle portion and the cap portion are made from a material selected from the group consisting essentially of chemical resistant polymers.

Furthermore, it is disclosed that the bottle portion (38) and the cap (22) do not have to be made out of the same material. For example, body (38) can be made from high-density polyethylene, while the cap (22) can be made from a low density polyethylene (see column 11, lines 1-40). This reference has been relied upon to teach that it is well known to utilize a material for the cap having a different modulus of elasticity than the material used for the body portion.

Therefore, it would have been obvious to one of ordinary level of skill in the art at the time the invention was made to modify the invention of EP 0322134 and construct the cap from a material having a different modulus of elasticity than the bottle body, since Tan et al. teaches that it is well known to utilize a material for the cap different than the material used for the bottle body. Furthermore, it would have been obvious to use a polyethylene such as high-density polyethylene for the cap because Tan et al. teaches that polyethylene is a known material used for constructing polymeric articles such as bottles and caps.

Additionally, it would have been obvious to one having ordinary level of skill in the art at the time the invention was made to use a high density polyethylene as the cap material, since it has been held to be within the general skill of a worker in the art to

select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

6. Claims 23 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0322134 in view of Tan et al. as applied to claims 1 and 26 above, and further in view of Oas et al. (U.S. Pat. 4,357,288).

EP 0322134 and Tan et al. do not teach the specific thickness of the polymeric bottles.

Oas et al. teaches a method of making a clear transparent polypropylene bottle. More specifically, Oas et al. disclose that the polypropylene bottles are constructed so that they have a wall thickness on the order 15 mils to 30 mils (0.38 mm to 0.76 mm) (see column 3, line 65 to column 4, line 8).

Therefore, since Oas et al. teaches a polypropylene bottle having a wall thickness that falls within the applicant's claimed range, it would have been obvious to one of ordinary level of skill in the art at the time the invention was made to make the polypropylene bottles disclosed by EP 0322134 so that they have a wall thickness of 0.38 mm to 0.76 mm as taught by the polypropylene bottles manufactured by Oas et al.

Applicant's Arguments

7. The applicant argues that the combination of EP 0322135 and GB 1,544,260 do not render obvious the presently claimed subject matter. Specifically, the applicant has

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argued that the cited references fail to teach or suggest a cap formed of a material having a modulus of elasticity different from the polypropylene bottle.

Response to Arguments

8. Applicant's arguments with respect to claims 21-23, 25-27 and 29 have been considered but are moot in view of the new ground(s) of rejection. The newly cited art to Tan et al. teaches that the bottle body and cap of a polymeric bottle do not have to be made out of the same material. For example, the bottle body can be made from high-density polyethylene, while the cap can be made from low-density polyethylene (see paragraph 11, lines 1-22).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. 4,971,213 to Ishinabe et al.

U.S. Pat. 4,754,892 to Retief

Both of these patents teach a cap or lid manufactured from a high-density polyethylene.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean Conley, whose telephone number is (703) 305-2430. The examiner can normally be reached on Monday-Friday 7:30 AM - 4:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Robert Warden, can be reached at (703) 308-2920. The Unofficial fax phone number for this group is (703) 305-7719. The Official fax phone number for this Group is (703) 872-9310.

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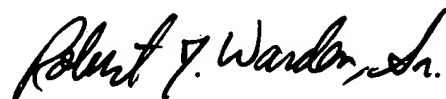
Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [robert.warden@uspto.gov]. All Internet e-mail communications will be made of record in the application file. PTO employees will not communicate with applicant via internet e-mail where sensitive data will be exchanged or where there exists a possibility that sensitive data could be identified unless there is of record express waiver of the confidentiality requirements under 35 U.S.C. 122 by the applicant. See the Interim Internet Usage Policy published by the Patent and Trademark Office Official Gazette on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist, whose telephone number is (703) 308-0661.

SEC



October 2, 2003



ROBERT J. WARDEN, SR.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700